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VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

**Re: Docket No. AB-33 (Sub No. 277X), Union Pacific Railroad Company –
Abandonment Exemption - In Lafourche Parish, LA**

**Docket No. AB-318 (Sub No. 7X), Louisiana & Delta Railroad, Inc. –
Discontinuance of Service Exemption – In Lafourche Parish, LA**

Dear Ms. Brown:

This is Union Pacific Railroad Company's ("UP") response to the letter filed by BNSF Railway Company ("BNSF") with the Board on December 6, 2011.

Union Pacific acknowledges that the Surface Transportation Board ("Board") by decision having a service date of September 29, 1998 in STB Finance Docket No. 33-630 recognized that on February 12, 1998 BNSF and UP entered into a Term Sheet Agreement ("Term Sheet") covering certain operations on shared trackage of the two railroads in and around Houston and along the Gulf Coast between Houston and New Orleans (the "50/50 Line"). The Term Sheet provides and the Board recognized that BNSF will gain access to all present and future shipper facilities on the 50/50 Line and on former SP (now UP) branches or spurs that connect to the 50/50 Line, as well as on new branches and spurs added to the 50/50 Line. That is access, not ownership.

However, at Section 2 of the Term Sheet entitled "Specific Terms Covering Joint Ownership and Dispatching of Former Lafayette Sub" it is clear that the right to serve all present and future industries or facilities originating or terminating traffic on the 50/50 Line and on former SP branches and spurs connecting to the 50/50 Line are subject to the existing operating rights of other railroads, including but not limited to the operations of Louisiana and Delta Railroad ("L&DRR"). Unless and until L&DRR consummates the discontinuance of its current railroad carrier operating authority on the portion of the 50/50 Line known as the Lockport Branch, which is the subject of the above-referenced abandonment and discontinuance exemption, neither Union Pacific nor BNSF have any right to access the subject Lockport Branch.



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It is important to note that the Term Sheet was eventually replaced by an agreement dated September 1, 2000 between BNSF and UP that was entered into to satisfy part of the UP/SP merger conditions ("50/50 Agreement"). The 50/50 Agreement was included as part of Union Pacific's oversight amendments to the UP/BNSF Settlement Agreement.

Therefore, BNSF does not have the contractual right to access nor does it have access rights it can use on the Lockport Branch at this time and cannot seek to access any existing or future shipper on the Lockport Branch unless and until the L&DRR has consummated the discontinuance of its Board authorized railroad operating rights on the Lockport Branch which are subject to the lease agreement between SP, (UP's predecessor in interest) and L&DRR.

The BNSF represents to the Board that it is been diligently working with a rail served shipper to have one of the shipper's facilities relocated adjacent to the Lockport Branch. UP knows of no rail served shipper that desires to relocate on the Lockport Branch. In accordance with the Board's decisions, in *Denver and Rio Grande Railway Historical Foundation-Adverse Abandonment-Mineral County, Colorado* with a service date of May 23, 2008 in STB Docket No. AB-1014 (the "City of Creed Matter"), under 49 U.S.C. 10903(d), the standard governing any application for authority to abandon a line of railroad is whether present or future Public Convenience and Necessity ("PC&N") requires or permits the proposed abandonment. In applying the PC&N standard in an adverse abandonment context the Board must consider whether there is a present or future public need for rail service over the Line and whether that need is out-weighed by other interests. Specifically, the Board will not accept speculative claims of potential freight traffic. *See also, Chelsea Property Owners-Abandonment-Portion of the Consolidated Rail Corp.'s West 30th Street Secondary Track in New York, NY*, 8 I.C.C. 2d 773, 779 (1992) (*Chelsea*), *aff'd sub nom., Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994) (*Conrail*). While the subject Abandonment and Discontinuance is voluntary and not adverse, the same standards for PC&N would apply.

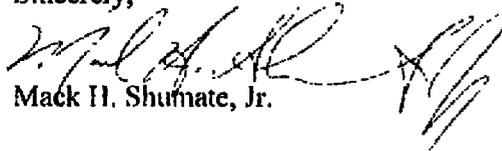
It is clear that to satisfy the requirements of PC&N, the BNSF needs more than its own self-serving statement that it is diligently working with a rail served shipper to have one of its facilities relocated adjacent to the Lockport Branch. A document in writing from the shipper stating the need, desire, funding and time frame required to locate on the Lockport Branch should at minimum be included with BNSF's request in order for the Board to have sufficient evidence so that it can reasonably determine if UP in this case or any railroad in the future should be prevented from consummating an abandonment and relocating the salvage and proceeds to other portions of its rail system. To rule otherwise would open all requests for authority to abandon a line of railroad to unnecessary and costly delay based on the unsubstantiated claims by another railroad or person that said railroad or person has a potential shipper for a particular line.

The offer of Financial Assistance process is open and available to BNSF and should be the process required to be utilized if BNSF truly believes that it has a shipper that desires to locate sometime in the future on the Lockport Branch. BNSF has a remedy and process

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available under the federal regulations which not only preserves the track structure and right-of-way for their potential use in providing PC&N, but also preserves UP's property rights and assets so that such assets or their value can be reallocated to the UP's railroad system to assist UP in meeting its obligation to provide for PC&N in its railroad operations system wide. The request by BNSF unfairly seeks to help BNSF and its alleged potential shipper at the expense and cost of UP and its shippers.

Sincerely,


Mack H. Shumate, Jr.